



Signed: August 29, 2008

*Leslie Tchaikovsky*

LESLIE TCHAIKOVSKY  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

No. 03-44829 TT  
Chapter 7

RALBERT RALLINGTON  
BROOKS-HAMILTON,

Debtor.

RALBERT RALLINGTON  
BROOKS-HAMILTON,

A.P. No. 03-4837 AT

Plaintiff,

vs.

CITY OF OAKLAND,

Defendant.

**MEMORANDUM OF DECISION ON REMAND RE SANCTIONS**

On September 1, 2004, an order was entered granting in part and denying in part the motion filed by defendant (the "City") for sanctions pursuant to Rule 9011(b) of the Federal Rules of Bankruptcy Procedure. In the order, the Court imposed sanctions against the debtor's counsel, David A. Smyth ("Smyth"), for filing claims that

1 were both frivolous and asserted for an improper purpose. The Court  
2 awarded the City monetary sanctions in the amount of \$10,671.

3 The order was affirmed by the Bankruptcy Appellate Panel. On  
4 further appeal, the Ninth Circuit Court of Appeals reversed the  
5 Court's order in part, finding that only one of the three legal  
6 claims was frivolous. It remanded, directing the Court to  
7 reconsider, given this ruling, the amount of the monetary sanction as  
8 well as whether the Court still believed the one frivolous claim had  
9 been asserted for an improper purpose. For the reasons stated below,  
10 the Court concludes that the one frivolous claim was asserted for an  
11 improper purpose but that the monetary sanction should be reduced to  
12 \$2,134.20. The reasons for the Court's ruling on remand is set forth  
13 below.

14 As noted above, the Court's award of sanctions was based on its  
15 conclusion that three of the claims asserted by Smyth in the above-  
16 captioned adversary proceeding were frivolous. The three claims and  
17 the rulings made concerning them are summarized below.

18 1. First, Smyth contended that the liens asserted on the  
19 debtor's property were illegal because they violated federal  
20 Department of Housing and Urban Development ("HUD") rules (the  
21 "Statutory Claim"). The Court concluded that Smyth's assertion of  
22 this claim was frivolous because the relitigation of this claim was  
23 barred by issue preclusion. A federal district court had dismissed  
24 this claim in an earlier action for lack of subject matter  
25 jurisdiction, finding that there was no private right of action  
26 created by a violation of HUD rules.

1           On appeal, the Ninth Circuit held that this was error. It ruled  
2 that the Statutory Claim was not barred based on issue preclusion  
3 because, in dismissing the claim, the district court never reached  
4 the question of whether a violation of HUD rules could be asserted as  
5 an affirmative defense to enforcement of the City's liens.

6           2. Smyth also contended that the City had breached its contract  
7 with the debtor by failing to disburse all the loan money promised.  
8 The Court concluded that Smyth's assertion of this claim was  
9 frivolous because the relitigation of the claim was barred by claim  
10 preclusion. A state court had sustained a demurrer without leave to  
11 amend to a Second Amended Cross-Complaint to the City's complaint,  
12 asserting the same claim for relief.

13           On appeal, the Ninth Circuit held that this ruling was also  
14 erroneous. It noted that, in the state court action, the City had  
15 demurred on two grounds: (1) statute of limitations and (2) failure  
16 to state a claim. While the order granting the demurrer stated that  
17 it was based on failure to state a claim, under California law, a  
18 general demurrer for failure to state a claim may also be based on  
19 the claim being barred by statute of limitations grounds. Under  
20 California law, a dismissal on limitations grounds does not give rise  
21 to claim preclusion. The Ninth Circuit held that it was impossible  
22 to determine from the state court's order whether the demurrer was  
23 based on the lack of substance of the allegations or the limitations  
24 grounds.

25           3. Finally, Smyth contended that the City had violated the one  
26 action rule, thereby waiving its liens, by obtaining a writ of

1 possession with regard to its personal property collateral. See Cal.  
2 Civ. Proc. Code § 726(a). The Court concluded that this claim was  
3 frivolous for two reasons. First, the law is clear that a secured  
4 creditor does not violate the one action rule by enforcing a writ of  
5 possession enabling it to take possession of its collateral. Second,  
6 even if the writ obtained by the City had been a writ of attachment,  
7 based on its underlying unsecured claim, a secured creditor does not  
8 violate the one action rule by simply obtaining such a writ. The  
9 rule is only violated by enforcing the writ. The Ninth Circuit  
10 affirmed this ruling, agreeing with the Court that Smyth's assertion  
11 of this claim was frivolous.

12 On remand, the Court concludes once again that, based on an  
13 objective standard, the assertion of the one action claim based on  
14 the undisputed facts underlying this proceeding was for an improper  
15 purpose. As the Ninth Circuit pointed out, as early as 1900, the  
16 Supreme Court of California rejected Smyth's argument that a secured  
17 creditor violated the one action rule by seeking a writ of possession  
18 of its personal property collateral. Moreover, Smyth did not even  
19 allege that the City had ever attempted to enforce the writ.

20 However, given the more limited basis for the Court's sanction  
21 ruling, the amount of the monetary sanction should clearly be  
22 reduced. In attempting to determine the appropriate amount of the  
23 reduction, the Court has reviewed the City's motion to dismiss and  
24 its reply brief, including the time entries made in support of the  
25 monetary sanction request. The Court is unable to determine from the  
26 time entries how much time was spent on the one action claim as

1 opposed to the two claims the assertion of which the Ninth Circuit  
2 has determined was not frivolous. Instead, the Court bases its award  
3 on the portion of the legal argument devoted to the one action claim:  
4 i.e., approximately twenty percent of the total. As a result, the  
5 monetary sanction will be reduced to twenty percent of the original  
6 award: i.e., to \$2,134.20. The order directing payment of this  
7 monetary sanction will be effective as soon as it is final.

#### 8 **CONCLUSION**

9 For the reasons stated above, the Court holds that the one  
10 action claim was a frivolous claim which was also asserted by Smyth  
11 for an improper purpose. For that reason, the City's motion for  
12 monetary sanctions should be granted. However, the amount of the  
13 award should be reduced to \$2,134.20, representing the portion of the  
14 fees incurred by the City attributable to the frivolous claim.  
15 Counsel for the City is directed to submit a form of order in  
16 accordance with this decision.

17 **END OF DOCUMENT**

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